THE CASE OF LEONARD WILCOCK

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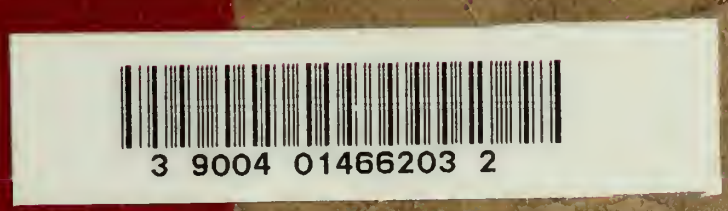

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The Case of Leonard Wilcox.

[I, LEONARD WILCOX, having arrived in the Harbour of York, in the Province of Upper Canada, in 1815, with a Boat containing a number of articles which I brought from the United States, intending to become a Permanent Settler in the Province, I applied to the Officer in Charge of the Custom-House to have my Boat and Goods entered, and pay the duties thereon. Instead of receiving the duties, he seized the Boat and Goods,—stating, that part of the articles were contraband goods, on which duties could not be received. As there were none of the articles landed, I requested permission to return, which he would not grant. The following is a part of the evidence given before a Committee of the House of Assembly appointed to investigate the case on my Petition praying for a remuneration for the loss sustained in consequence of the said seizure :]—

Q. Do you not know that the boat was seized for not paying the duties on the first cargo? A. It was detained on some pretence of such duties due, but not seized—the goods of first cargo were given up, as I understood.

MR. HAMILTON—Called.

Q. Were you Deputy-Collector at the time of the seizure of Wilcox's boat? A. I was in his absence (Mr. Allan's) then in Lower Canada.

Q. Was Mr. Allan absent at the time you seized the boat? A. To be sure he was.

Q. For what cause did you seize the boat? A. For having goods on board which could not be entered.

Q. Did not Wilcox give an invoice? A. He gave the number of packages, but not their contents.

Q. Did Wilcox expect the packages to be examined? A. I suppose not.

Q. Did he request a permit? A. He did, but I would not grant it till I examined them—I did examine, and the first article I discovered was a box of dry goods.

Q. Did you question him as to the contents of the packages? A. I did—he answered in some evasive way I cannot say, it is now so long ago.

Q. When you seized the boat and goods, what proceedings did you institute? A. I put the goods into Mr. Allan's store; the Custom-house locked them up, and delivered them to Mr. Allan on his return; the boat I hauled up a little on the beach, of which Mr. Allan also got the custody on his return; and this is all I did, till called as a witness in court upon the trial.

Mr. WILCOX requested the following questions to be put to Mr. Hamilton :—

Q. What was the contents of the box of which you spoke as con-

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taining the dry goods? A. Pieces of shawls, pieces of muslin, and an assortment of merchandize.

Q. What do you suppose was the value of these goods? A. I cannot say at this distance of time—it required three men to lift the case.

Q. Can you say, even at a conjecture, what the value might have been? A. I cannot; some articles were of a doubtful description—and I could not say whether they were profitable or not; these were returned to Wilcox—that is, they were sent back to Mr. Allan's store; this was after trial.

Q. Was there not a valuation had of them upon the seizure? A. There was, as I suppose, but I was not present—Mr. Allan knows, I suppose.

Q. Do you know any thing about the proceeds of the sale of the boat and goods? A. I do not, otherwise than understanding from Mr. Allan that the Attorney-General's bill was about £20, and that he paid him.

Q. Had you any of the crockery taken in the boat in your store for sale? A. If I had, I bought them at the auction, and paid for them.

Q. Were you Deputy-Collector at the time of the sale? A. No—I had nothing to do with the office at the time.

February 2d, 1830.

MONIS LAWRENCE—Called.

Q. Do you know any thing of Wilcox's entry of his goods at the Custom-house? A. I went with Wilcox in the month of August, 1815, to the office of Mr. Hamilton, the then Deputy-Collector, and saw him deliver an invoice or bill of lading of his goods on board his boat then in the Bay.

Q. Do you know that this bill of lading agreed with the cargo? A. I cannot tell—about an hour after this I heard the boat was seized.

Q. Did you understand why the boat was seized? A. Mr. Hamilton told me it was on account of having contraband goods on board.

Q. Did you understand that these goods, so considered as contraband, were said to have been on board the boat at the time of this seizure, or that they were alleged to have been on board at an earlier period, the previous spring, on the first coming in of this boat? A. I understood it was for the goods then on board at the time of seizure—I was with Wilcox's brother when he entered the boat in the Spring at the Custom-house; the goods were landed and boat returned on her voyage; there was no difficulty about the first entry—the goods were mostly brought to my house.

Q. Did Mr. Hamilton act as Deputy-Collector in Mr. Allan's presence as well as in his absence? A. He did. I understood he was a regular deputy—I did not see his authority, but I understood he was his deputy. I kept a public-house, and had frequent applications from persons to let them know the Collector and his place, and I usually directed to Mr. Hamilton, and do not recollect any doubt of it.

THOMAS BRIGHT—Called.

Q. What do you know relative to the matters of Wilcox's complaint? A. I know his boat was seized and sold as condemned goods.

Q. Did Mr. Hamilton sell the boat himself? A. He did—at auction.

Q. What did you give for her? A. I bought her very low—I did not want the boat, but she went so low I bought her—it was £20 or very little upwards—it might be one or two pounds over, but I will not say more.

Q. Did you buy her tackle, rigging, &c.? A. I did suppose I bought all at the auction; but demanding the sails and rigging, I could not get them—they were not to be found—I never got them—I was told they were stolen—I still kept the boat, because she was worth much more—indeed she is worth more now at this day.

Q. Where is she now? A. By the shore side, owned by one of the Wallers, as I think.

Q. What is she now worth? A. Indeed I know not; I am not a judge; yet I think she could not be built under 300 dollars—she is yet able to work—was no doubt a well-built boat, better than usual on this side; she was from 50 to 53 or 54 feet keel, and 10 or 11 beam.

Q. What might the sails be worth? A. In estimating her value at 300 dollars I meant to include sails.

Q. To whom did you pay the value of the boat? A. To Mr. Hamilton or Mr. Allan I certainly paid the money, but to which I do not recollect; but I think Mr. Allan.

HON. WM. ALLAN—Called.

Q. Were you in Lower Canada at the time of seizure of said boat? A. I was absent during the whole of the summer of 1815—returning in the fall, I can positively say I was not here at the time of seizure; I may have been here at the time of first coming in of the boat in the spring, though I am not certain.

Q. Was Mr. Hamilton your Deputy? A. Yes—he was.

Q. How long was the boat kept before trial? A. I cannot say.

Q. Do you recollect the amount the boat and goods sold for? A. Not the smallest recollection.

Q. Do you know if any report was made to the Inspector-General? A. I do not—it is always usual to make return of seizures to the Inspector, and send a copy to the Attorney or Solicitor General at same time; I presume it was done in this case also, but cannot say.

Q. Was Hamilton your Deputy at the time? A. He was, and I must presume he did so.

Q. Did you receive the proceeds of the sale, or any part? A. I do not think I did receive any; there is some possibility of it, but I do not think I got any of it.

Q. Did Mr. Hamilton, as your Deputy, make returns of money to the Inspector-General or Receiver-General? A. Never.

Q. Do you know what became of the tackle of the boat? A. I do not know.

I received no redress.

That, notwithstanding these losses, I persevered in my original intention of becoming a permanent settler, (with the intention of keeping a public-house;) purchased a piece of land on Yonge Street, about 13 miles from York; built thereon a commodious house, and there expended the greatest part of my remaining means. I then applied for a license, but was refused, as I had not taken the Oath of Allegiance.

I made application to the proper authority to be permitted to take the Oath of Allegiance as prescribed by law. The following statements will show the manner in which I have been fleeced of my rights in this instance by those at the head of affairs:—

To the Honourable Samuel Smith, Esquire, Administering the Government of the Province of Upper Canada;

THE PETITION OF LEONARD WILCOX—

Humbly Sheweth:

That the said Leonard Wilcox has resided a number of years within this Province, and has erected commodious buildings on Yonge Street, 13 miles from York, for the purpose of keeping a house of public entertainment, and, upon making application, found that the oath could not be administered by a magistrate; therefore takes the liberty of petitioning your Honour for the privilege of taking the oath of allegiance for the purpose of obtaining a licence for the accommodation of travellers—And your Petitioner, as in duty bound, will ever pray for your prosperity.

We, the undersigned, being personally acquainted with the above-named Leonard Wilcox, have ever found him an honest, good, and industrious man; and having been at great expense in building convenient Houses for the accommodation of travellers, do recommend him as a fit person for a tavern license.

(Signed) James Fulton, J. P. James Fenwick, J. P.
James Mustard, W. R. Caldwell,
John Button, J. H. Chewitt,
Thomas Stoyell, Jonathan Shaw.
George Playter,

Yonge Street, August 12, 1817.

Markham, Aug. 16th, 1817.

May it Please Your Honour,

At the request of Leonard Wilcox, of the Township of Vaughan, I take the liberty to represent that he requested me to administer the oath of allegiance to him soon after his arrival in this Province, but I told him that I was instructed to the contrary, unless he obtained a special order from the Lieutenant Governor's Office.

Mr. Leonard Wilcox has invariably supported the character of an honest and very industrious man during his residence in this neighbourhood; and, if he should be permitted to take the oath of allegiance, I verily believe he would prove to be an useful and a faithful subject.

I have the honor to be Your Honor's most obedient and very Humble Servant,

(Signed) JAMES FULTON, Sen'r.

To the above application and petitions no official *written* answer was given, but the Governor's Secretary informed me *verbally* that I could not be permitted to take the oath sought for. Seeing, therefore, that my singular case stood no chance of a favourable hearing, I yielded to circumstances, and made no further application until 1826, when I memorialed Sir P. Maitland, and received the following reply:—

Government House, 31st December, 1826.

Sir,—In reply to your Memorial of the 9th instant, praying for relief, I am commanded to inform you that his Excellency regrets that he cannot extend the relief prayed for at this distance of time.

I have the honor to be, Sir, your obedient Servant,

(Signed) G. HILLIER.

Finding that I would not be allowed to take the Oath of Allegiance, although at the time town-clerk for the Township of Vaughan, and having acted as juror at the Sessions in the Home District at different times, and having embarked so large a capital in erecting and furnish

Toronto 19 June 1841

£2.10.0

Received from Mr. Queen mond
the sum of two pound ten shillings currency being the Ninth Instalment of ten
per cent on each Stock in the Yonge Street wharf Company

Chas Percy
Treasurer

ing my said house,—I procured a friend to take out a licence in his own name for my said house, (and for which licence I paid the sum of £8, 15s.,) and under him I conducted the business of an innkeeper six months in 1817, until I was summoned before the Magistrates, fined, and paid £20, with £1, 5s. costs, and obliged to shut up my house. The following is a statement of the trial in that case:—

Adjourned General Quarter-Sessions of the Peace, York, 6th August, 1817.

PRESENT.

GRANT POWELL, Esq. *Chairman*,
WILLIAM ALLAN,
ALEXANDER WOOD,
WILLIAM CHEWETT,
} *Esquires, Justices, &c.*

On complaint of William Allan, Esquire, inspector Town of York, on the 2d instant, that Leonard Wilcox, of the Township of Vaughan, sold spirituous liquors without licence; a warrant had been issued accordingly, and he appearing and on being examined thereto acknowledged that the licence which he now sold under had been granted to the house he now occupied in the name of Whitfield Patterson, but had not been legally signed over to him, as he is now informed.

Whereupon, it was ordered that Leonard Wilcox do pay a fine of £20, with costs, and also that he enter into recognizance for his appearance at the Court of General Quarter-Sessions, to be holden here on the 14th October next ensuing, and give evidence against Whitfield Patterson, &c., which he has accordingly done as follows:—

Leonard Wilcox	£10,	CONDITION.
Jacob Munshaw, . .	5,	That Leonard Wilcox do appear at next
Jarius Ashley, . . .	5,	Court of General Quarter-Sessions, to be

holden here, and give evidence against Whitfield Patterson for a misdemeanour, &c., and not to leave the Court without permission.

A true Extract from the Record.

For S. WASHBURN, Esq. *Clerk Peace H. D.*
(Signed) CHS. M. K. BATY.

WHITFIELD PATTERSON'S CERTIFICATE.

I hereby certify that I licensed the House of Leonard Wilcox, on Yonge Street, in the year 1817; and authorized him to sell for me, and he was fined for selling under the said licence.

(Signed) WHITFIELD PATTERSON.

York, 12th February, 1829.

Witness—JOHN FENTON.

Seeing the want of Carding Machines in the part of the province in which I settled, and being under the impression that the duty on such would be 10 per cent. I imported one in 1816, and was obliged to pay 30 per cent. duty; which duty, amounting to $75, has never been accounted for by the Custom-House officer to whom it was paid.

Before the Committee of the House of Assembly, 2d of February 1820.

JONAS DUNCAN—Called.

Q. What have you to say relative to an arrival, entry, seizure, and condemnation of Leonard Wilcox's boat and cargo, in the spring of 1816, in the harbour of York? A. I know nothing.

Q. What of the Carding Machine, its entry and duty, in the spring of 1816? A. I did come with this machine at the time mentioned, and I saw it entered in the Custom-house with Major Allan, who wss there himself at the time. I brought the Machine in for Leonard Wilcox—I received it from his brother Charles Wilcox, (who is a machine-maker,) for Leonard, and worked it for Leonard, being six months in his employment.

Mr. JAMES NATION—Called.

Q. Are you a Clerk in the Inspector-General's Office? A. Yes.

Q. Is there any entry in the books of the Receiver-General's Office of a seizure, condemnation, sale, or return of a boat and cargo belonging to Leonard Wilcox, in the year 1815, in the harbour of York? A. From June downwards there does not appear any port entry, that I can trace.

Q. Is there any entry of a Carding Machine, as entered by Leonard Wilcox or Benjamin Hoshel in the year 1816, at York? A. There are entries of two Carding Machines,—one of Edward Thompson, the other does not state the name of the importer, as far as I can find. It appears that the duty of 30 per cent. was paid on both those machines —it was my impression both machines were imported by Edward Thompson.

I can prove at any time that Edward Thompson imported two machines that season, on which he paid the duties.

The Honorable Wm. Allan very plainly tells the Committee of the House of Assembly that Hamilton was his Deputy:—Cannot say how long the boat was kept before trial:—Has not the smallest recollection of the amount the boat and goods sold for:—Cannot say that a return of the seizure was made to the Inspector, or a copy sent to the Attorney or Solicitor General, but bluntly presumes that such was the case:—Admits the possibility of his having received the amount of the sale of Boat and Goods:—Does not know what became of the Tackle of the Boat.

I have also frequently made inquiry to find out whether Mr. Allan had accounted to Government for the $75 paid duty on the Carding Machine, but have every reason to believe that he has not—(See Mr. James Nation's evidence before the Committee.)

From all the circumstances herein stated, the public will have an opportunity of judging the fitness of such persons as the Honorable Wm. Allan and his comrade to fill the different important situations they have for such a length of time held, and still hold, in the Province,—acting as Prosecutor, and Judge, and Jury in many instances as well as mine. In the case of the Innkeeping Prosecution, at that time I was bound over with two sureties to appear at the next Quarter-Sessions to be held in the District, to give evidence against Whitfield Patterson, who was never called upon to answer for the misdemeanour mentioned, although I was put to the trouble and expense of attending during the sitting of said Sessions. All these persecutions and hard usage I must allude to the vindictive conduct of the said Collector of Customs and his Colleagues, which I always considered contrary to the intention of His Majesty's Proclamation inviting Settlers to come into the Province, and contrary to humanity and common justice.

February 24th, 1830.

LEONARD WILCOX—Again called.

COMMITTEE—Messrs. Ketchum, Cawthra, and Baldwin.

Q. What was the value of your boat and cargo on your arrival in York, at the most reasonable estimate? A. Boat and goods, at first cost, cost me £427 : 12 : 6d. Prov. Cur'y., exclusive of the cooking utensils on board the boat.

Q. Can you estimate what was the value of that part of the goods returned to you, at their first cost, and not in their injured state? A. About £130. Of these I sold a part, but did not get their value.

Q. Can you state the value of the articles condemned, at their first cost? A. The difference between the whole amount and that of the goods returned.

Q. Can you say how much was sold by the Collector, or Deputy-Collector? A. I cannot—I rather think there was not much sold—I saw my goods, about £100 worth, in Mr. Hamilton's store or shop; he was then a merchant or grocer, and had goods for sale—not a large store, but he had one in the house where Mr. Willard now has his store.

Q. What was the description of the goods belonging to you, and which you saw in Hamilton's store? A. Some large soup dishes, plates, knives and forks, quart decanters, pint decanters, and other glass-ware fit for an inn. The crate of crockery cost me 200 dollars, the crate of glass about 160 dollars, besides the knives and forks.

REPORT OF COMMITTEE.

To the Honourable the House of Assembly—

Your Committee, to whom was referred the Petition of Leonard Wilcox, beg leave respectfully to report:

That the Petitioner came into this Province from the State of New-York, in the spring of 1815, to prepare for the intended removal of his family as settlers.

That he brought a boat, loaded with necessaries for his own household use, and some materials for building, a principal part of which were of articles prohibited.

That, under the belief that his so coming into the Province was lawful, on his arrival with his boat he immediately reported her to Mr. Hamilton, the Deputy-Collector of the Port of York—She was nevertheless seized as having prohibited goods on board,—these prohibited goods being, as Petitioner states, wholly for his own use; which seems not contradicted nor incredible under the circumstances—however, the vessel and part of the cargo were condemned, by proceedings in the King's Bench: Your Committee, therefore, must report the seizure lawful.

That that part of the goods not prohibited were restored, after several months' detention, and greatly injured and wasted—the boat was sold under the judgment, without the rigging and tackle, which could not be found at the time of sale, and the Petitioner could not learn what became of them.

That, as it appears to your Committee, no report or return of this seizure and sale was ever made to the Inspector-General's Office, which Petitioner urges as a further cause of complaint—and, without

doubt, the persons having the execution of this part of the law should now account to Government for the proceeds of this seizure.

Petitioner further complains, that having broken up his establishment at his house, he was compelled, amidst these unpromising circumstances, still to pursue his object of settling in the Province; and in the winter of the same year he brought in his wife and children, and having erected a house on Yonge Street, accommodated for an Inn, he applied for a licence, which was refused, as he had not taken the oath of allegiance. He accordingly applied to the Magistrates for this purpose, but was refused, though bearing written testimonials of his fitness and good conduct. He further applied to the Honourable Samuel Smith, then administering the Government, for the same purpose, but was still refused.

That your Petitioner, having his house erected and furnished as an Inn, under the pressure of this embarrassment procured a friend, one Patterson, to take out a Tavern License for his House; and, this done, he entered on the business of Inn-Keeping. Shortly after, he was informed against by William Allan, Esq., then Inspector of the Town of York, for selling spirituous liquors without license, and was fined £20 because his license was not assigned to him by Patterson according to law.

Your Committee, having examined into the legality of the proceedings, must report to your honourable House, that they have been, as far as they can judge, legal; yet the law has been, nevertheless, oppressive, in the instance of the Petitioner, who, coming in, bona fide, as a settler, so long ago as 1815, and ever since having passed a sober, useful and industrious life, has fallen most undeservedly a victim to the unreasonable rigour of the law, contrary to the true spirit of the British Statute 30th Geo. 3d. ch. 27, "for encouraging new settlers in his Majesty's Colonies and Plantations in America."

Your Petitioner, reduced to distress, even to temporary imprisonment in jail for debt, seems to place his hopes of some relief from your Honourable House; and your Committee are induced to recommend him for a small pecuniary relief, to be proposed in the Committee of Supply, it being the only way in which the severity of the law can be mitigated in such a case, and as the recovery of the proceeds of the seizure will, at least to some extent, reimburse the public; upon which part of the subject, your Committee beg leave to report, that, by the evidence, it appears certain that the sum of £20 was paid for the boat, either to the Collector or his Deputy, but to which, in particular, does not appear. The former assures your Committee, that, to the best of his recollection and belief, he did not receive it; and the latter assures your Committee, positively, that he did not receive it. Besides these twenty pounds, the proceeds of the Goods sold, and the tackle and rigging not sold, remain also to be accounted for, but your Committee have not been able to trace the matter out.

Your Committee have, in the course of their enquiry, witnessed much inconvenience from placing the collection of duties in the hands of persons in trade, either as principals or deputies.

They forbear to report the evidence, merely as adding unnecessarily to the public expense.

(Signed) JESSE KETCHUM, *Chairman.*

Committee Room, Commons House of Assembly,
February 26th, 1830.

REVENUE LAW.—*WILCOX'S CASE.*

41 Geo. 3, ch. 5, p. 136—Collector shall return all duties and seizures at or before the expiration of every six months.

Ibid. p. 137, sec. 8—Prescribes manner of making entry—it seems the report of the packages is sufficient—punishment of offending against the provision of this clause—fine not less than £5, nor over £250.

Page 136, Chapter 5. In the 41st. year of George iii, A. D. 1801. Which said Collector, or Collectors, or his, or their, Deputy, or Deputies, shall make his or their report to the said Governor, Lieutenant-Governor, or person administering the Government, of all entries made at his or their respective port or ports, and accounts to the Receiver-General of the said Province for all duties and seizures levied, paid, and made under and by virtue of any Act or Acts of the Parliament of Great Britain, or under and by authority of this Act, at or before the expiration of every six months.

Will the people of this Province rest satisfied while such men have power to decide upon their lives, liberty, and property; and such men as Judge Willis and others ruined for endeavouring to support impartial justice?—We hope not. If ever this Province was called upon to take a bold stand, in order to protect their rights and secure the pure and impartial administration of justice, it is at the present alarming crisis.

The time is near approaching when the People of the Province will have it in their power to elect as their Representatives men of independent principles; and it is to be hoped that, when they meet in the House of Assembly, it will be a House that will be jealous of its privileges, (as Britons or naturalized subjects,) and efficient in the work of legislation,—a House that will neither be ashamed nor afraid to put executive influence at defiance; to stem the torrent of official corruption; and to protect from the slightest encroachment the constitutional liberties of the people.

LEONARD WILCOX.

Toronto, September, 1834